Criminal Appeal No.226-DB of 1998.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

..

Date of Decision: November 22, 2007.

Tarsem Singh **...**Appellant

VERSUS

State of Punjab **...**Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. K.R. Dhawan, Advocate,
for the appellant.

Mr. V.K. Jindal, Additional Advocate General,Punjab.

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MOHINDER PAL, J.

Tarsem Singh (appellant) has filed this appeal against the judgment of conviction and sentence order dated November 24, 1997, passed by the learned Sessions Judge, Ferozepur, whereby he was convicted under Section 302 of the Indian Penal Code (hereinafter referred to as `the Code') and sentenced to undergo life imprisonment and to pay fine of Rs.3,000/-, in

default whereof to undergo further rigorous imprisonment for six months.

2. In this case, First Information Report (Exhibit P.H) was recorded on the basis of statement of complainant Babu Singh (P.W.5). The brief facts of the case are that on December 02, 1994, at about 9 P.M, complainant Babu Singh (P.W.5), Kaka Singh (P.W.10) and Darshan Singh, were coming back from the fields on a tractor. When they reached in front of the fields of Tak Singh, in the light of their tractor, they saw that Tarsem Singh (appellant) was giving blows with `Tokki' on the head and neck of Sukhpal Singh deceased (hereinafter referred to as `the deceased') while the deceased was sitting on the driver's seat of his tractor and the appellant was standing on the cultivators fitted with the tractor. They raised an alarm. The appellant tried to run away from the spot, but was overpowered by complainant Babu Singh and others along with the `Tokki'. Sukhpal Singh succumbed to the injuries at the spot. Darshan Singh went to village Bahadur Khera, where the deceased was residing, to give information regarding the occurrence. Gurcharan Singh and Sukhmander Singh also reached the spot along with Darshan Singh. Gurcharan Singh and Sukhmander Singh were left at the spot to guard the dead body whereas Babu Singh, Darshan Singh and Kaka Singh went to the police station to lodge report. The appellant along with `Tokki' was also taken by them to the Police Station.

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Thereafter, Inspector Baljinder Singh along with complainant Babu Singh and others went to the place of occurrence, but due to darkness the investigation could not be carried out. On December 03, 1994, in the morning hours, Inspector Baljinder Singh prepared inquest report (Exhibit P.B) on the dead body of Sukhpal Singh and sent the dead body for post mortem through Constables Jagir Singh and Balwant Singh along with request (Exhibit P.C).

3. Dr. Ramesh Kumar (P.W.1), Medical Officer, Civil Hospital, Abohar, on December 03, 1994, conducted post mortem examination on the dead body of Sukhpal Singh and found the following injuries:-

> " 1. Incised wound 15 cms x 6 cms on the left side of neck extending from 2 cms lateral to mid-line middle of neck to left parietal area of head. Wound was gaping. The underlying tissue was congested. Left carotid vessels were cut through. The parietal bond was cut through. Brain matter was lacerated and coming out of the wound. Clotted blood was present in brain tissue.
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> 2. An incised wound 13 cms x 4 cms on the back of head on occipital area. The tissue was congested. Bone was fractured and brain tissue lacerated. Clotted blood was present.
>
> 3. An incised wound back of neck in the middle obliquely above downward 7 cms x 4 cms.

There was congestion of tissues and 4th cervical vertebra was fractured. Clotted blood was present.

4. An incised wound 8 x 2 cms on the back of lower part of neck. Wound was muscle deep. Underlying tissue was congested.

5. An incised wound 8 x 4 cms on the occipito-parietal region left side, bone deep. Bone was cut. Clotted blood was present. "

In the opinion of the Doctor, the cause of death was due to shock and haemorrhage as a result of injury No.1 specifically and all the injuries collectively, which were sufficient to cause death in the ordinary course of nature. He also opined that all the injuries on the person of the deceased could be caused with `Tokki' (Exhibit P.1).

After completion of investigation, challan was presented against accused.

4. On March 31, 1995, the learned Sessions Judge, Ferozepur, framed charge under Section 302 of the Code against appellant Tarsem Singh, to which he did not plead guilty and claimed a trial.

5. At the trial, the prosecution examined P.W.1 Dr.Ramesh Kumar, P.W.2 Chander Mohan, Patwari, who prepared scaled site plan (Exhibit P.E), P.W.3 Constable Sukhraj Singh, P.W.4 Constable Jagir Singh, P.W.5 Babu Singh, complainant/eye-

witness, P.W.6 Head Constable Iqbal Singh, P.W.7 Constable Sucha Singh, P.W.8 Amarjit Singh, P.W.9 Devinder Kataria, Photographer, P.W.10 Kaka Singh, another eye-witness of the occurrence and P.W.11 Inspector Baljinder Singh, Investigating Officer of the case.

6. Statement of the accused was thereafter recorded under Section 313 of the Code of Criminal Procedure in which he denied the prosecution allegations and pleaded false implication. He further stated that he never worked with Sukhpal Singh (deceased) as `Siri' (helper in agricultural work). He was living at Village Muradwala with his brother-in-law. He was picked up by the police at about 5 A.M from Dhaban Kakrian, where he was irrigating the fields. No evidence was led by him in defence.

7. We have heard Mr. K.R. Dhawan, learned counsel for the appellant and Mr.V.K.Jindal, learned Additional Advocate General, Punjab, and have gone through the records of the case with their help.

8. While arguing before us, learned counsel for the appellant contended that motive version has not been proved in this case. He further argued that there was a delay in receipt of Special Report by the Magistrate as the incident had taken place on December 02, 1994, at 9 A.M but the Special Report reached the Ilaqa Magistrate at 5.45 A.M on December 03, 1994 whereas the First Information Report had been recorded at 12.30 A.M and copy of the Special Report was handed over to Constable Sucha Singh at 2 A.M. It was also argued that material

independent eye-witness Darshan Singh has not been examined and that the persons examined were close relatives of the deceased and were interested witnesses. Lastly, it was contended that these witnesses were not present at the place of occurrence as both the tractors were coming from the opposite side and it was not possible for the witnesses to see beyond the lights of the incoming tractor and, under these circumstances, they could not have seen the appellant causing injuries to the deceased.

9. On the other hand, learned Additional Advocate General, Punjab, reiterated the stand taken in the trial Court and argued that there was no delay in the lodging of First Information Report and sending of the Special Report to the Magistrate. The witnesses had no enmity to falsely implicate the appellant. He prayed for upholding the judgment of the trial Court.

10. The motive part has been explained by P.W.5 Babu Singh, who has stated that the appellant was suspecting that the deceased was having illicit relations with the sister of the appellant and due to that grudge, he had committed the murder of the deceased. Thus, there was strong motive for the appellant to cause injuries on the person of the deceased as he was suspecting that the deceased was having illicit relations with his sister. Moreover, the motive is a double-edged weapon. If the appellant had no motive to cause injuries to the deceased, then the complainant also had no motive to falsely implicate him.

11. Coming to the delay in receipt of Special Report by the

Ilaqa Magistrate, the prosecution had examined Sucha Singh, Constable (P.W.7), who had taken the Special Report for its delivery to the Ilaqa Magistrate. In his affidavit (Exhibit P.O), he stated that he went to the house of the Ilaqa Magistrate for delivering the Special Report, but due to odd hours the door was not opened. At 5.45 A.M the door of the house was opened and he handed over the Special Report to the Ilaqa Magistrate. Thus, the delay if any in delivering the Special Report, stands explained.

12. The next argument of learned counsel for the appellant is that P.W Darshan Singh had no land in the area where the occurrence had taken place and, therefore, there was no reason for him to take his tractor to the side of occurrence. Admittedly, P.W Darshan Singh had no land there, but it has also come in the evidence that he was owner of the tractor on which Babu Singh (P.W.5) and Kaka Singh (P.W.10) were coming back from their fields and the tractor had been taken on hire to plough the fields of Babu Singh. So, even if Darshan Singh had no land adjoining to the fields of the deceased, he had all the reason to be there at the time of occurrence along with his tractor.

13. The next argument of learned counsel for the appellant is that Babu Singh (P.W.5) and Kaka Singh (P.W.10) are interested witnesses as the deceased was the nephew of Babu Singh and Kaka Singh is brother-in-law (wife's brother) of Jaskaur Singh, brother of Babu Singh. We do not find any

substance in this arguments. The statements of Babu Singh and Kaka Singh cannot be discarded merely because of their relationship with the deceased. It is highly improbable that they would falsely implicate the appellant for the murder of Sukhpal Singh, leaving aside the real culprit. The medical evidence furnished by Dr.Ramesh Kumar (P.W.1), quoted above, furnishes corroboration to the ocular evidence given by P.W.5 Babu Singh and P.W.10 Kaka Singh. The doctor, on post mortem examination of the deceased, had found five incised wounds of the size of 15 cms x 6 cms, 13 cms x 4 cms, 7 cms x 4 cms, 8 cms x 2 cms and 8 cms x 4 cms on the neck and head of the deceased and he was almost beheaded. The photographs (Exhibits P.7 to P.13) of the dead body of Sukhpal Singh, which were taken by P.W.9 Davinder Kataria, Photographer, tell the tale of the gravity of the injuries inflicted by the appellant with `Tokki' (Exhibit P.1). The Doctor had also opined that all the injuries on the person of the deceased could be caused with `Tokki' (Exhibit P.1). The appellant was apprehended at the spot by the witnesses and taken to Police Station along with the weapon of offence. The very fact that the appellant was overpowered by complainant Babu Singh (P.W.5), Kaka Singh (P.W.10) and Darshan Singh at the spot and was produced by them before Inspector Baljinder Singh (P.W.11) shortly after the occurrence, speaks volumes for the fact that the appellant had inflicted injuries with `Tokki' to Sukhpal Singh on his neck, resulting in his instantaneous death. So, it cannot be said by any stretch of imagination that the

eye-witnesses are the made up witnesses. In this view of the matter, another argument of the learned counsel for the appellant that as both the tractors were coming from the opposite side, it was not possible for the witnesses to see beyond the lights of the incoming tractor, loses significance. In a case like the present one, where there is direct evidence, such like argument based on presumption cannot hold the fort. Both the eye-witnesses were subjected to a searching cross-examination, but nothing could be extracted which could throw any doubt on the veracity of the prosecution case. Moreover, in this case the appellant had taken the plea of alibi that he was irrigating the fields on the relevant day at Village Dhaban Kokrian, from where he was picked up by the police at about 5 A.M. Thus, once the appellant had taken the plea of alibi, the onus shifted to him to prove that he was at the place where he alleged. However, he had not examined any evidence to prove that he was irrigating the fields at Village Dhaban Kokrian at the relevant time.

14. For the aforesaid reasons, we do not find any merit in this appeal. The same is hereby dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

(MOHINDER PAL)
JUDGE

November 22, 2007.
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